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execution of a previously existing grudge and in pursuance of a previously declared purpose is murder in the first degree.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 118.]

2. Criminal Law (§ 822 (1)*)—Instructions.—Instructions are to be read as a whole.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 743.]

3. Homicide (§ 112 (1)*, 190 (7)*)—Justifiable Homicide—Threats.—Threats made by a deceased will not be considered as affording any justification for a homicide, unless communicated to the accused prior to the killing, although uncommunicated threats may be proved to have been made.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 112, 133, 139.]

4. Criminal Law (§ 810*)—Inconsistent Instructions.—An instruction that use of a weapon in killing deceased was sufficient to raise a presumption of malice was not inconsistent with an instruction that accused had right to arm himself if he reasonably apprehended that another intended to kill him or do him serious bodily harm; instructions being given on opposing theories.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 729.]

Error to Circuit Court, Scott County.

John W. Stapleton was convicted of voluntary manslaughter, and brings error. Affirmed.

W. S. Cox, of Gate City, *G. Claude Bond*, of Nicklesville, and *Coleman & Carter*, of Gate City, for plaintiff in error.

John R. Saunders, *Atty. Gen.*, and *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, for defendant in error.

DENNIS *v.* ROBERTSON

Sept. 19, 1918.

[96 S. E. 802.]

1. Taxation (§ 781*)—Tax Deed—Character.—A tax deed at common law is simply a link in the chain of the grantee's title, and does not ipso facto transfer the title of the owner, as in grants from the government, or deeds of private persons, its operative character depending upon the regularity of the previous proceedings.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 173.]

2. Taxation (§ 789 (3)*)—Tax Deed—Effect.—No presumption arises from mere production of a tax deed that the facts on which it is based had any existence, but when it is shown that the ministerial officers of the law have performed their every duty the deed

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

becomes conclusive evidence of title in the grantee according to its purport.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 173.]

3. Taxation (§ 788 (3)*)—Tax Deed—Conveyance of Title of Commonwealth—Application of Rule.—Rule that no presumption arises on mere production of tax deed that facts on which it is based existed, applies to tax deed undertaking to convey title of commonwealth, acquired at previous sale for delinquent taxes, to purchaser from commonwealth.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 172.]

4. Taxation (§ 798 (3)*)—Sale for Taxes—Compliance with Statute by Purchaser.—Whether tax deed undertakes to convey title of commonwealth acquired by it at previous sale of land for taxes, or undertakes to convey title of original owner to purchaser at sale for taxes, any steps which statute requires grantee to take in order to acquire commonwealth's title must be strictly complied with.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 172.]

5. Constitutional Law (§ 285*)—Taxation (§ 615*)—Due Process—Sale for Taxes.—Preliminary steps to a tax sale necessary to afford owner due process of law, guaranteed by Constitution, cannot be dispensed with even by express legislative enactment.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 133.]

6. Constitutional Law (§ 285*)—Due Process—Sale for Taxes—Right of Original Owner.—Where commonwealth has obtained valid title to land and makes deed to purchaser from it, case not being that of deed to purchaser at delinquent tax sale by treasurer, original owner is without ground of complaint if commonwealth denies him privilege to redeem or other such quasi rights.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 154.]

7. Constitutional Law (§ 285*)—Due Process—Sale for Taxes—Deed from Commonwealth.—Where tax deed conveys title from commonwealth, statute may provide that, when such deed to purchaser from it is made as prescribed, its validity cannot be questioned by former owner on grounds concerning proceedings subsequent to acquisition of title by commonwealth, or antecedent to such acquisition, but not going to validity of title.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 154.]

8. Taxation (§ 748*)—Tax Deed from Commonwealth—Statutory Steps.—Proceedings prescribed as steps to precede execution of tax deed from commonwealth, which has acquired title, to purchaser from it, though to be taken after acquisition of title by commonwealth, are jurisdictional steps, conditions precedent to validity of deed.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 172.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

9. Taxation (§ 748*)—Deed from Commonwealth—Statutes.—Where deed is made to purchaser from commonwealth under Code 1904, § 666, under section 661, proceedings required by section 666 are conditions precedent to validity of deed as much as nonexistence of facts, mentioned in section 661, as grounds on which its validity may be assailed.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 172.]

10. Taxation (§ 773*)—Deed from Commonwealth—Recitals as Evidence—Statutes.—Under Code 1904, §§ 661, 666, recitals in tax deed from commonwealth to purchaser from it, made and recorded under section 666, have force of prima facie evidence of existence of jurisdictional steps recited, but not of conclusive evidence, steps being those required by section 666 to be taken subsequent to acquisition of title by commonwealth and preceding execution of deed.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 173.]

11. Taxation (§ 748*)—Tax Deed from Commonwealth—Conditions Precedent to Validity—Statute.—Under the Resale Act, § 12, requirements of preceding sections are as much conditions precedent to validity of tax deed from commonwealth to purchaser from it as are nonexistence of facts mentioned in section as grounds on which deed may be assailed.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 172.]

12. Taxation (§ 773*)—Tax Deed—Recitals as Evidence—Statute.—Under the Resale Act, § 10, providing tax deed from commonwealth to purchaser from it shall set forth all facts on record in clerk's office in relation to sale, recitals are prima facie evidence of existence of jurisdictional steps recited.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 173.]

13. Taxation (§ 684 (4)*)—Sale to Commonwealth—Identity of Lot—Statutes.—Under Code 1904, §§ 662, 663, identity of lot sold for taxes to commonwealth was fixed by its description in list returned by treasurer when he reported sale.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 140.]

14. Taxation (§ 679 (6)*)—Sale for Taxes—Resale by Commonwealth—Description—Statute.—The Resale Act, §§ 2, 4, 10, renders it essential to acquisition, by any one, from commonwealth, of title to lot sold for taxes, that identity of lot be made to appear by sufficient description in proceedings required for resale, list of lots to be sold containing description as well as deed to purchaser.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 154.]

15. Taxation (§ 734 (10)*)—Sale for Taxes—Sale by Commonwealth—Lack of Description.—Under the Resale Act, §§ 2, 4, 10, where clerk's list, treasurer's notice of sale, and report of sale by

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commonwealth of lot purchased for delinquent taxes contained no description of lot, proceedings leading to deed to purchaser were fatally defective, though it appeared owner was not assessed with other land in year.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 172.]

16. Taxation (§ 775*)—Tax Deed—Description—Extraneous Testimony.—Extraneous testimony is admissible to apply description in tax deed to its subject, so as to identify land on ground.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 175.]

17. Taxation (§ 796 (3)*)—Sale for Taxes—Suit to Cancel Deed.—Where commonwealth has obtained title by sale for taxes, and owner or successors have not redeemed, and commonwealth's deed to another, under Resale Act, was void, title still remains in commonwealth, and owner cannot sue to cancel it as cloud on title.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 177.]

Error to Circuit Court, Bedford County.

Suit by A. W. Robertson against Charles Dennis. To review decree for plaintiff, defendant brings error. Set aside and annulled, without prejudice to plaintiff to redeem the lot in question according to law, and thereafter to sue.

Thos. W. Miller, of Roanoke, for appellants.

Landon Lowry, of Bedford City, for appellees.

SNIDOW et al v. BOARD OF SUP'RS OF GILES COUNTY et al.

Sept. 19, 1918.

[96 S. E. 810.]

1. Eminent Domain (§ 86*)—Property Rights—Franchise—"Private Property."—A ferry franchise granted by circuit court under legislative authority is a private property right protected by Const. 1902, § 58, providing that private property shall not be taken or damaged for public use without compensation.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 87.]

2. Ferries (§ 16*)—Franchises—Exclusiveness.—Where a ferry franchise is given by legislative authority, its rights are not exclusive as against a later constructed nearby ferry or bridge constructed under legislative authority, unless the franchise or grant of the former provides that they shall be exclusive, but no ferry not authorized by legislative authority can be operated without being liable to the former for loss of custom, notwithstanding Code 1904, § 1386.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 32, 33.]

3. Ferries (§ 16*)—Franchises—Construction.—A ferry franchise

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.